

IFW

PTO/SB/64 (07-05)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

First named inventor: Robert S. Alvin

Application No.: 09/343,550

Art Unit: 3625

Filed: June 30, 1999

Examiner: Cuong H. Nguyen

Title: Multi-level Fraud Check with Dynamic Feedback for Internet Commerce

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JAN 06 2005

OFFICE OF PETITIONS

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee -- required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ 1,500.00 (37 CFR 1.17(m)).

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Response to Office Action (identify type of

reply):

☐ has been filed previously on _____.

☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____.

☐ has been paid previously on _____.

☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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01/04/2006 HGUTEN1 00000119 09343550 750.00 0P
01 FC:2453

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$_____ for a small entity or \$_____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

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SA Swernofsky
Signature
Steven A. Swernofsky
Typed or printed name

December 29, 2005
Date
33,040
Registration Number, if applicable

P.O Box 390013
Address
Mountain View, CA 94039-0013
Address

(650) 947-0700
Telephone Number

- Enclosures: ☒ Fee Payment Check No. 6479
☒ Reply
☐ Terminal Disclaimer Form
☒ Additional sheets containing statements establishing unintentional delay
☒ Other: Fee Transmittal (2 copies)

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
- ☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (571) 273-8300.

December 29, 2005
Date

SA Swernofsky
Signature
Steven A. Swernofsky
Typed or printed name of person signing certificate

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<div style="text-align: center;"> <h1 style="margin: 0;">FEE TRANSMITTAL</h1> <h2 style="margin: 0;">for FY 2004</h2> <p style="font-size: small;">Effective 10/01/2003. Patent fees are subject to annual revision.</p> <p><input checked="" type="checkbox"/> Applicant Claims small entity status. See 37 CFR 1.27</p> </div>	<div style="text-align: right; font-weight: bold; font-size: 1.2em;">RECEIVED</div> <div style="text-align: right; font-weight: bold; font-size: 1.2em;">JAN 06 2005</div> <div style="text-align: right; font-weight: bold; font-size: 1.2em;">OFFICE OF PETITIONS</div>												
<div style="display: flex; justify-content: space-between;"> <div> <p>TOTAL AMOUNT OF PAYMENT (\$)</p> <p>750.00</p> </div> <div> <p>Complete if Known</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>Application Number</td><td>09/343,550</td></tr> <tr><td>Filing Date</td><td>6/30/1999</td></tr> <tr><td>First Named Inventor</td><td>Robert S. ALVIN</td></tr> <tr><td>Examiner Name</td><td>Nguyen</td></tr> <tr><td>Art Unit</td><td>3625</td></tr> <tr><td>Attorney Docket No.</td><td>269.1003.00</td></tr> </table> </div> </div>		Application Number	09/343,550	Filing Date	6/30/1999	First Named Inventor	Robert S. ALVIN	Examiner Name	Nguyen	Art Unit	3625	Attorney Docket No.	269.1003.00
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METHOD OF PAYMENT (check all that apply)	FEE CALCULATION (continued)																																																																																																																																																																																		
<p><input checked="" type="checkbox"/> Check <input type="checkbox"/> Credit card <input type="checkbox"/> Money Order <input type="checkbox"/> Other <input type="checkbox"/> None</p> <p><input checked="" type="checkbox"/> Deposit Account</p> <p>Deposit Account Number: 50-0365</p> <p>Deposit Account Name: Swernofsky Law Group PC</p> <p>The Director is authorized to: (check all that apply)</p> <p><input type="checkbox"/> Charge fee(s) indicated below <input checked="" type="checkbox"/> Credit any overpayments</p> <p><input checked="" type="checkbox"/> Charge any additional fee(s) or any underpayment of fee(s)</p> <p><input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.</p>	<h3>3. ADDITIONAL FEES</h3> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2">Large Entity</th> <th colspan="2">Small Entity</th> <th rowspan="2">Fee Description</th> <th rowspan="2">Fee Paid</th> </tr> <tr> <th>Fee Code</th> <th>Fee (\$)</th> <th>Fee Code</th> <th>Fee (\$)</th> </tr> </thead> <tbody> <tr><td>1051</td><td>130</td><td>2051</td><td>65</td><td>Surcharge - late filing fee or oath</td><td></td></tr> <tr><td>1052</td><td>50</td><td>2052</td><td>25</td><td>Surcharge - late provisional filing fee or cover sheet</td><td></td></tr> <tr><td>1053</td><td>130</td><td>1053</td><td>130</td><td>Non-English specification</td><td></td></tr> <tr><td>1812</td><td>2,520</td><td>1812</td><td>2,520</td><td>For filing a request for <i>ex parte</i> reexamination</td><td></td></tr> <tr><td>1804</td><td>920*</td><td>1804</td><td>920*</td><td>Requesting publication of SIR prior to Examiner action</td><td></td></tr> <tr><td>1805</td><td>1,840*</td><td>1805</td><td>1,840*</td><td>Requesting publication of SIR after Examiner action</td><td></td></tr> <tr><td>1251</td><td>120</td><td>2251</td><td>60</td><td>Extension for reply within first month</td><td></td></tr> <tr><td>1252</td><td>450</td><td>2252</td><td>225</td><td>Extension for reply within second month</td><td></td></tr> <tr><td>1253</td><td>1,020</td><td>2253</td><td>510</td><td>Extension for reply within third month</td><td></td></tr> <tr><td>1254</td><td>1,590</td><td>2254</td><td>795</td><td>Extension for reply within fourth month</td><td></td></tr> <tr><td>1255</td><td>2,160</td><td>2255</td><td>1,080</td><td>Extension for reply within fifth month</td><td></td></tr> <tr><td>1401</td><td>500</td><td>2401</td><td>250</td><td>Notice of Appeal</td><td></td></tr> <tr><td>1402</td><td>500</td><td>2402</td><td>250</td><td>Filing a brief in support of an appeal</td><td></td></tr> <tr><td>1403</td><td>1,000</td><td>2403</td><td>500</td><td>Request for oral hearing</td><td></td></tr> <tr><td>1451</td><td>1,510</td><td>1451</td><td>1,510</td><td>Petition to institute a public use proceeding</td><td></td></tr> <tr><td>1452</td><td>500</td><td>2452</td><td>250</td><td>Petition to revive - unavoidable</td><td></td></tr> <tr><td>1453</td><td>1,500</td><td>2453</td><td>750</td><td>Petition to revive - unintentional</td><td>750.00</td></tr> <tr><td>1501</td><td>1,400</td><td>2501</td><td>700</td><td>Utility issue fee (or reissue)</td><td></td></tr> <tr><td>1502</td><td>800</td><td>2502</td><td>400</td><td>Design issue fee</td><td></td></tr> <tr><td>1503</td><td>1,100</td><td>2503</td><td>550</td><td>Plant issue fee</td><td></td></tr> <tr><td>1460</td><td>130</td><td>1460</td><td>130</td><td>Petitions to the Commissioner</td><td></td></tr> <tr><td>1807</td><td>50</td><td>1807</td><td>50</td><td>Processing fee under 37 CFR 1.17(q)</td><td></td></tr> <tr><td>1806</td><td>180</td><td>1806</td><td>180</td><td>Submission of Information Disclosure Stmt</td><td></td></tr> <tr><td>8021</td><td>40</td><td>8021</td><td>40</td><td>Recording each patent assignment per property (times number of properties)</td><td></td></tr> <tr><td>1809</td><td>790</td><td>2809</td><td>395</td><td>Filing a submission after final rejection (37 CFR 1.129(a))</td><td></td></tr> <tr><td>1810</td><td>790</td><td>2810</td><td>395</td><td>For each additional invention to be examined (37 CFR 1.129(b))</td><td></td></tr> <tr><td>1801</td><td>790</td><td>2801</td><td>395</td><td>Request for Continued Examination (RCE)</td><td></td></tr> <tr><td>1802</td><td>900</td><td>1802</td><td>900</td><td>Request for expedited examination of a design application</td><td></td></tr> </tbody> </table> <p>Other fee (specify) _____</p> <p>*Reduced by Basic Filing Fee Paid</p>	Large Entity		Small Entity		Fee Description	Fee Paid	Fee Code	Fee (\$)	Fee Code	Fee (\$)	1051	130	2051	65	Surcharge - late filing fee or oath		1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet		1053	130	1053	130	Non-English specification		1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination		1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action		1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action		1251	120	2251	60	Extension for reply within first month		1252	450	2252	225	Extension for reply within second month		1253	1,020	2253	510	Extension for reply within third month		1254	1,590	2254	795	Extension for reply within fourth month		1255	2,160	2255	1,080	Extension for reply within fifth month		1401	500	2401	250	Notice of Appeal		1402	500	2402	250	Filing a brief in support of an appeal		1403	1,000	2403	500	Request for oral hearing		1451	1,510	1451	1,510	Petition to institute a public use proceeding		1452	500	2452	250	Petition to revive - unavoidable		1453	1,500	2453	750	Petition to revive - unintentional	750.00	1501	1,400	2501	700	Utility issue fee (or reissue)		1502	800	2502	400	Design issue fee		1503	1,100	2503	550	Plant issue fee		1460	130	1460	130	Petitions to the Commissioner		1807	50	1807	50	Processing fee under 37 CFR 1.17(q)		1806	180	1806	180	Submission of Information Disclosure Stmt		8021	40	8021	40	Recording each patent assignment per property (times number of properties)		1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(a))		1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))		1801	790	2801	395	Request for Continued Examination (RCE)		1802	900	1802	900	Request for expedited examination of a design application	
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SUBMITTED BY		Complete (if applicable)	
Name (Print/Type)	Steven A. Swernofsky	Registration No. (Attorney/Agent)	33,040
Signature	<i>SA Swernofsky</i>	Telephone	650-947-0700
		Date	12/29/2005

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269.1003.01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Robert S. Alvin

Serial No.: 09/343,550

Filed: June 30, 1999

For: Multi-level Fraud Check with
Dynamic Feedback for Internet
Commerce

Art Unit: 3625

Examiner: Cuong H. Nguyen

Tel: (571) 272-3765

Office Action Mailed On:

October 2, 2001

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JAN 06 2005

OFFICE OF PETITIONS

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P.O. Box 1450
Alexandria, VA 22313-1450

on _____

Date

By: _____

PETITION TO REVIVE

To the Commissioner:

INTRODUCTION

We petition for revival of this application, which became abandoned for failure to respond to the Office Action mailed October 2, 2001. As described below, the facts upon which this petition is based are unusual. We believe these unusual facts adequately explain the intervening time from when a response to the Office Action was due. Accordingly, we respectfully request the

Commissioner to give weight to the unlikelihood and unusualness of these facts, and the manifest injustice that would be visited upon the petitioner if this petition were not granted.

In brief,

- (1) This application was the property of a company that was placed in bankruptcy. The bankruptcy filing occurred well before the Office Action was mailed.
- (2) There was no communication between the attorneys who filed this application and the bankruptcy trustee.
- (3) The bankruptcy trustee has no knowledge of patent law, and in fact, sold the application well after it had become abandoned.
- (4) The assignee did not receive this purchased application until recently, and did not receive the patent history until even more recently.
- (5) The assignee acted immediately and diligently to determine the status of this purchased application. When the assignee found that it was abandoned, it took immediate and diligent steps to attempt revival, whence this petition.

STATEMENT OF FACTS

In support of this petition, the Applicants respectfully submit the following:

1. US PTO Form, Petition For Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b).
2. A response to the Office Action dated October 2, 2001.
3. A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to CFR 1.137(b) was unintentional. A declaration in support of the facts is included from the investigating attorney.
4. The required fee.

The date of the Office Action (October 2, 2001) and the Notice of Abandonment (May 7, 2002) occurred after the time that Hardwarestreet.com was placed into chapter 7 bankruptcy (January 2001). The bankruptcy trustee had no contact with the attorneys originally responsible for prosecuting the application and was never made aware that action was required on the application. Upon receiving assignment of the application to them, Innovation Management Sciences (hereinafter "IM Sciences") diligently pursued resolving the lack of action on this application up to and including the filing of this petition.

As shown by the facts described in this petition and its supporting documents, the entire duration between the due date for the reply to the Office Action, and filing of this petition pursuant to CFR 1.137(b) did not involve any intent to abandon the application, or even to delay response to the Office Action. The timeline of events shows that there was never any actual or attributable knowledge to petitioners, or any others in control of prosecuting this application, that any action was required to prevent abandonment of the application. Accordingly, failure to respond to the Office Action was clearly unintentional.

POINTS AND AUTHORITIES

MPEP 711.02. A petition to revive an abandoned application on the grounds that the failure to reply was unintentional (37 CFR 1.137(b)) must be accompanied by (1) the required reply (which has been filed); (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; (3) any terminal disclaimer required pursuant to 37 CFR 1.137(d) (see above discussion); and (4) the [5] petition fee as set forth in 37 CFR 1.17(m). No consideration to the substance of a petition will be given until this fee is received. The Director may require additional information where there is a question whether the delay was unintentional.

37 CFR 10.18. A practitioner is obligated to inquire into the underlying facts and circumstances when making the statement that the entire delay in filing a reply was unintentional under 37 CFR 1.137(b).

1. Petitioner and petitioner's attorneys have made a reasonable investigation into the facts. Petitioner and petitioner's attorneys have determined the following facts summarized here from the included Declaration of Facts in Support of Petition for Revival of an Application for Patent Abandoned Unintentionally:

a. In January 2001, Hardwarestreet.com is placed into Chapter 7 bankruptcy. Approximately 10 months later (October 2001) an Office Action is mailed from the PTO, but there is no one at Hardwarestreet.com as it is now out of business. The bankruptcy trustee sets about his business of selling the assets of Hardwarestreet.com. He has no contact with the attorneys of record for the patent application and is unaware that a response to an Office Action is due. Hardwarestreet.com intellectual property is placed up for bid on an Internet auction site.

b. Circa March 2003, IM sciences becomes aware of the patent application and place a bid. IM Sciences is informed that it placed the winning bid, but legal transfer of ownership of the patent application by the bankruptcy trustee does not occur until June 28, 2005. Circa July 2005, IM Sciences orders the file for the application from the PTO. Upon receipt of the file (Circa August 2005), IM Sciences discovers the identity of the attorneys of record and contacts them. The attorneys of record tell IM Sciences that they will look into the matter and get back to IM Sciences. IM Sciences contacts the attorneys of record again and leave a message inquiring into the status –

there is no response from the attorneys of record so IM Sciences calls Swernofsky Law Group PC (November).

c. Swernofsky Law Group PC determines that their duty of candor before the PTO and the rules incident to reviving a patent application requires investigation of the facts surrounding the failure to file a timely response to the Office Action dated October 2, 2001 (37 CFR 10.18). Investigation of the facts starts promptly and is completed in late December. From the facts, Swernofsky Law Group PC determines that the entire delay in responding to the Office Action was unintentional and unavoidable.

2. The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

3. The required fee is included. Should the fee be inadequate, authorization is hereby granted to charge any additional fee amount to Deposit Account No. 50-0365.

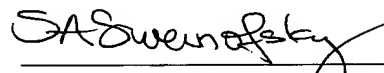
REQUESTED RELIEF

We respectfully request the limited relief that

- (1) This petition be granted,
- (2) This application be revived from abandonment,
- (3) The enclosed Response to Office Action be entered, and
- (4) Prosecution of this application is reopened.

Respectfully submitted,

Dated: December²⁹, 2005


Steven A. Swernofsky (Reg. No. 33040)

Please send all future correspondence to the address below:

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